

## Clark's 'Bugging' Purge May Spark Political Fire

By John P. MacKenzie 12/2/66

Washington Post Staff Writer

When the three DiNero brothers of Youngstown, Ohio, were indicted in 1964 for cheating on the death taxes of their murdered brother, the U.S. Attorney General hailed the "outstanding investigation efforts by the intelligence division of the Internal Revenue Service."

Tuesday night the Justice Department revealed that the investigative work included planting a microphone in the DiNeros' business establishment two months before the indictment and leaving it there for two months after it.

The contrast between the

praise of former Attorney General Robert F. Kennedy and the program of Acting Attorney General Ramsey Clark to purge Federal prosecutions, present and past, of tainted evidence focused attention yesterday on the political fallout from the national "bugging" controversy.

Clark's plans were disclosed Tuesday night when Solicitor General Thurgood Marshall told the Supreme Court that an "intensive review" of Government criminal cases was underway to see how many trials were affected by Fed-

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## 'Bugging' Purge Could Release Political Fallout

General use of bugging devices before President Johnson banned the practice last year.

Another round of recriminations appeared in store with the prospect of dozens of disclosures that Federal agents, many of them eagerly cooperating in the Kennedy drive on organized crime, invaded the privacy of the men they were investigating.

No Justice Department official will estimate the number of prosecutions, present and past, affected by the bugging cleanup program, but it appeared certain that most of them would be of 1961-1964 vintage. This was the height of Kennedy's coordinated anti-rackets campaign and a period when electronic eavesdropping was becoming increasingly popular with investigators.

Kennedy has said that he was unaware and did not authorize any general program of electronic eavesdropping or wiretapping. He said yesterday that when he went out of his way to praise investigative work, it usually was because he was proud of cooperation between agencies.

Kennedy was generally credited with succeeding where previous Attorneys General had failed—bringing the full powers of scattered agencies to bear on a single problem, in this case organized crime.

But the policy backfired in the DiNero case and in the case of Joseph F. Schipani of Brooklyn, whose attempt to

win Supreme Court review of his tax evasion conviction had been bugged by two agencies, the FBI and the Alcohol and Tobacco Unit of the IRS.

Marshall said the bugging of business establishments frequented by Schipani—a target of an organized crime investigation—tainted his trial so badly that a new trial was called for.

In the DiNero case the Department asked the U.S. Sixth Circuit Court of Appeals not to wash out the convictions but to order a trial court hearing to see whether the bugging contaminated the prosecution. Marshall said the convictions should stand if the Government can show it did not profit from the electronic trespass.

The Justice Department took the same position in May when it made the startling disclosure that Washington lobbyist Fred B. Black Jr. had been a bugging victim. On Nov. 7 the Supreme Court ordered a new trial for Black over Marshall's objections that a limited hearing would cover the situation.

Department lawyers see the Black case as a warning that any defendant can raise the bugging issue at any stage of the case—even where, as in the Black and Schipani cases, the Supreme Court has already denied review.

Officials say the clean-up program's first and critical phase is to make sure that no



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further prosecutions go forward until tainted evidence is eliminated. This includes critical stages of appeals to higher courts where the Government must argue that a conviction should be upheld.

Prosecuting divisions have been submitting lists of their cases to the FBI and other investigating agencies to see

whether any eavesdropping was involved. In the Schipani case the FBI responded within four days.

In another development yesterday Marshall said the law is now clear that the manner of eavesdropping is no longer decisive in determining its legality. The Supreme Court no longer cares whether an inefficient microphone hookup

required penetration of a suspect's wall while an efficient mechanism can overhear conversations without physical penetration.

Either way, Marshall said, it's an illegal trespass and the fruits are subject to suppression as trial evidence. He made the observations in a luncheon talk to the Association of Federal Investigators.